

## INFUSE CONSULTING LTD - TERMS AND CONDITIONS

Infuse Consulting Limited (“Infuse”) applies standard terms and conditions to the Products and Services that it provides.

The standard terms and conditions are provided in the pages which follow as:

Section 1: Terms and Conditions that apply to Consultancy Services

Section 2: Terms and Conditions that apply to sales of the Proprietary Software useMango by Infuse on behalf of its associate/subsidiary company UseMango Limited and

Section 3: Terms and Conditions that apply to sales of third-party Software by Infuse

In the event that Infuse and its Customers agree variations on the standard terms and conditions for the supply of *Consultancy Services*, such variations will apply to any contract agreement between Infuse and such Customers and those variations shall prevail, in the event of any dispute, over the standard terms and conditions for the supply of those Consultancy Services.

The standard terms and conditions for Software are in general prescriptive and apply to all Infuse supplies of Software without exception or variation.

The Section 1 Terms and Conditions that apply to Consultancy Services state that Infuse would normally expect to enact a standard mutual Non-Disclosure (‘Confidentiality’) and standard mutual Non-Compete Agreement (NDA and NCA) with its Customers for the benefit of both parties.

The standard Infuse NDA/NCA is shown as:

Section 4: Standard NDA/NCA for Infuse with its Customers

Although the terms of any NDA/NCA between Infuse and its Customer(s) may be varied on agreement between the parties.

## SECTION 1: TERMS AND CONDITIONS THAT APPLY TO CONSULTANCY SERVICES

A Work Order for Consultancy Services (Statement of Work or ‘SOW’) shall be subject to the terms and conditions (‘the Standard Terms & Conditions’) set out below.

However, if Customer and Infuse agree terms that conflict, or are at variance, with these Standard Terms & Conditions, the terms agreed between Customer & Infuse shall apply:

**Mutual NDA/NCA:** Infuse and Customer, if they have not already done so, shall enact a binding and mutual confidentiality agreement/NDA: this shall apply fully to all contents of any SOW between Infuse & Customer and any related datasheets and other documents including all Terms and Conditions documents. Further, as part of the same document, the Parties shall enact a mutual non-compete/NCA under which Infuse and Customer shall commit to restrictions on offering employment to each other’s staff members and to falsely representing themselves as being connected with or interested in the business of the other Party.

### **Third Party Software Order via Distribution:**

Customer agrees upon acceptance and execution of a SOW that if Infuse places an order with a third party for its Software under that SOW, Customer agrees to make undisputed payment of 100% of any such third party fees for that Software in full accordance with any Pass-Through Terms of that third party. Customer understands that any third party Software or similar fees cannot reasonably, and will not, be subject to acceptance of any delivery terms otherwise contained in an Infuse SOW such as, for example, any Delivery Clause governing the “Review And Acceptance Of Deliverables” and performance to milestones, and agrees that whilst Infuse will make all reasonable efforts to ensure delivery as required by Customer, such third party factors are outside the control of Infuse in respect of Infuse’s delivery obligations in a SOW.

**Standard Working hours:** Infuse’s Standard Working hours for its performance of a SOW is 8 hours a day performed between the hours of 7.00a.m. to 7.00p.m. each day, Monday to Friday, with one unpaid hour for lunch taken between 12.00 noon and 2.00 p.m. each day. Any hours mutually agreed to be worked over and above a normal working day, defined as 8 hours, between 7.00am and 7.00pm Monday to Friday, would be charged on a pro-rata hourly-rate basis, with the hourly rate calculated as the Daily Fee Rate divided by 8 hours multiplied by the total additional hours worked.

**Non Standard Working hours:** Should Customer request, and Infuse agree, that the services be performed during “Non Standard Working hours”, or “Weekends/Holidays”, the hourly rate to be applied shall be calculated as the Standard Working hours Daily Fee Rate divided by 8 hours multiplied by 1.5.

**Payment & Expenses:** All fees, estimated expenses and charges for the Services agreed in a SOW (including applicable taxes or other charges, if any, imposed by any federal, state and/or local government entity) shall be invoiced by Infuse in accordance with the terms of that SOW and paid by Customer unless agreed otherwise within thirty (30) days of Infuse’s invoice date for those fees, estimated

expenses and charges. Where applicable and agreed in a SOW, Customer acknowledges and agrees that it shall owe and pay Infuse for actual and reasonable expenses incurred by Infuse in connection with the Services to be provided in accordance with Infuse's travel and expense guidelines as amended from time to time and that such actual and reasonable expenses shall be invoiced by Infuse in accordance with the terms of that SOW and paid by Customer unless agreed otherwise within thirty (30) days of Infuse's invoice date(s) therefor.

**Ownership of Work Product:** Each party will retain all rights in and to all data, information, techniques, software code, methodologies and materials that it develops under a SOW, including without limitation any patents, patent rights, copyrights, trade secret rights and other intellectual property rights embodied therein.

Customer may not transfer or disclose the Work Product of a SOW to any other person or party except as may be prescribed under relevant legislation or other authority regulation/law. Such things as Work Product are regarded as confidential and subject to any NDA between the parties and both parties may reuse knowledge or expertise gained by that party during the course of performing the assignment services, provided that such use does not breach any confidentiality obligations to, or proprietary rights of, the other party.

**Limitation of Liability:** Infuse shall not incur any liability, whether based in contract, tort (including negligence) or any other legal theory, for indirect, consequential, incidental, special or punitive damages of any kind even if Customer has been advised of, or advises, the possibility of such damages excepting only damages in respect of Infuse causing death or serious injury or damages that may be prescribed at law. Infuse's maximum liability for damages arising out of or relating to the Services provided under the Work Order, whether based in contract, tort, or any other legal theory, will not exceed the amounts paid hereunder for the particular Services giving rise to the cause of action.

**Variation of Delivery Date by Customer:** The date for performance of the Services may normally be rescheduled once subject to prior written notice. Any request for such rescheduling must be received by Infuse at least fourteen (14) days before the proposed start date of the Services to be rescheduled, provided the new date for performance is within 12 months of the date originally specified. If such notice is not received and Infuse nevertheless agrees to delay the start of the Services, then in addition to the Fees applicable to those Services, Customer shall be liable to pay to Infuse the full cost of any such delay, including, but not limited to, the fees otherwise due in relation to any personnel or contractors of Infuse assigned to perform the Services and not re-deployed.

**Review & Acceptance of Deliverables:** Customer shall, acting reasonably and subject to any specific agreement to the contrary, normally notify Infuse in writing within five (5) business days of receiving a Deliverable whether it conforms to the requirements set forth in any given Work Order or SOW. Customer shall specify in sufficient detail the nature and scope of any non-conforming Deliverable. Infuse shall, upon receipt of such written notice, act diligently to correct such deficiencies. Customer will not unreasonably withhold or delay acceptance of Deliverables and corrected deficiencies in Deliverables. If Customer fails to notify Infuse in writing of a deficiency in the Deliverable within the five (5) business days from delivery, the Deliverable shall be deemed accepted and in full conformance

to the Work Order. If, in Infuse's opinion, Infuse is unable to remedy a non-conforming Deliverable then, as Customer's sole and exclusive remedy, Infuse shall refund the portion of the purchase price relating to the non-conforming Deliverable.

**Force Majeure:** Infuse will not be responsible for any failure to perform due to "force majeure" causes beyond its reasonable control including, but not limited to, acts of God, riots, embargoes, terrorist acts, acts of civil or military authorities, disruptions in the flow of data to or from networks, denial of or delays in processing of export license applications, accidents, strikes, fuel crises or power outages.

**Miscellaneous:** These T&Cs constitute the entire agreement with regard to terms and conditions between the parties with respect to the subject matter hereof, unless the parties agree otherwise in any SOW or other contractual agreement between the Parties in writing, and these T&Cs supersede all prior agreements or representations, oral or written, regarding such subject matter. These T&Cs and the rights hereunder are not transferable or assignable without the prior written consent of the parties hereto, except that Infuse may, upon notice to Customer, assign this Agreement and/or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to a successor pursuant to a merger, consolidation or sale, or to an entity which acquires all or substantially all Infuse's assets or business. In addition, Infuse may delegate the performance of certain Services to third parties, provided Infuse controls the delivery of such Services and remains responsible for the delivery of such Services. The following sections shall survive expiration or termination of this Agreement: Payments and Expenses, Ownership of Intellectual Property, Intellectual Property Rights and Limitation of Liability.

For the avoidance of doubt, the terms and conditions incorporate legal understandings that:

- Customer agrees that the Confidential Information of Infuse, including technical, financial or commercial information, may not be used, disclosed, reproduced, summarised, extracted or distributed (except as necessary to exercise the rights or perform its obligations under this Agreement). Equally, Customer shall not instruct Infuse to provide the services to any system that it does not own or have the right to test, tune or performance manage.
- Infuse shall not have any liability, whether based in contract, tort (including negligence) or any other legal theory, for indirect, consequential, incidental special or punitive damages of any kind, including loss of profits, cost of procurement or substitute products or services, loss of data, interruption or loss of use of services or equipment arising out of or relating to this Agreement or the performance or breach hereof, even if the party has been advised of the possibility of such damages. Infuse's maximum liability to Customer for damages arising out of or relating to this Agreement, whether based in contract, tort, or any other legal theory, will not exceed the amounts paid by Customer for the previous twelve (12) month period for the particular services giving rise to the cause of action.
- Assignments will be invoiced in accordance with any specifically-agreed terms for each work order or SOW and will normally be payable within 30

days of receipt by Customer of Infuse's invoices therefor, including any amounts which may become due for any expenses which may be agreed in any SOW.

- All charges for consultancy services shall be quoted in any Infuse SOW or work order exclusive of VAT and/or any governmental or other taxes. Such taxes shall be levied ('added') at the appropriate rate when invoices are issued by Infuse and shall be payable by Customer when those invoices are paid.
- The interpretation, construction and effect of any Work Order resulting from acceptance of this Proposal shall be governed by and construed in all respects in accordance with the laws of England and the Parties (Infuse and Customer) shall submit to the exclusive jurisdiction of the English Courts.

## SECTION 2: TERMS AND CONDITIONS THAT APPLY TO SALES OF THE PROPRIETARY SOFTWARE USEMANGO ON BEHALF OF USEMANGO LIMITED

The purchase of useMango, the Proprietary Software of Infuse's associate/ subsidiary company UseMango Limited, shall be subject to Standard Terms & Conditions as prescribed in the Master License Agreement issued by UseMango Limited as follows:

### USEMANGO LIMITED

#### USEMANGO PRODUCTS MASTER LICENSE AGREEMENT

PLEASE READ THIS MASTER LICENSE AGREEMENT BEFORE PURCHASING OR USING THE PRODUCTS. BY USING OR PURCHASING THE PRODUCTS, THE CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT SHOULD NOT PURCHASE OR USE THE PRODUCT.

The terms of this License Agreement govern any agreement entered into by UseMango Limited. ("UseMango") and the End-Customer ("Purchaser" or "User") under which the Customer purchases, or has purchased UseMango Products ("Products") from UseMango AND under which UseMango provides, or continue to provide the Products to the End-Customer.

#### 1. LICENCE(S).

**1.1 Licence Grant.** Subject to the terms and conditions of this Agreement, UseMango grants to Customer, a perpetual, non-exclusive, non-transferable right and license, solely to the object code version of the Products and without the right to grant or authorize sublicenses or to further distribute the Products: (i) to install the Products on up to one (1) machines for each User (however, only one copy may be used by each User at a time); (ii) for Users to use the Products solely in the normal course of Customer's (or End-Customer's) internal business operations

**1.2 Licence Restrictions.** The Customer shall not, whether itself, or through any parent, subsidiary, affiliate, agent or any other corporate or natural person (i) sell, lease, licence, distribute, sub-licence or otherwise transfer in whole or in part, any Products or provide the related software or the documentation thereto to a third party; (ii) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Products, in whole or in part, nor will the Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Products or encourage others to do so, except to any relevant legal or regulatory requirements on the Customer to do so. In the event of any legal or regulatory requirements requiring the Customer to do anything specified in (i) or (ii), the Customer shall first advise UseMango, giving 30 days' notice of any such requirements, and shall provide all and any reasonable information, as requested by UseMango, to enable UseMango to investigate and assess the Customer's claim and for UseMango to agree or otherwise or provide alternatives that may mitigate or negate any impact on UseMango's intellectual property or other rights. Further, the Customer shall not (iii) allow access or permit use of any Products by any users other than those authorised by the end-Customer; (iv) create, develop, licence, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Products or any additional licensing terms provided by UseMango via documentation, notification, and/or policy change advised by UseMango, or the terms of this Agreement; (v) modify or create derivative works based upon the Products; (vi) disclose the results of any benchmark test of the Products to any third party without UseMango's prior written approval, or (vii) create, modify, or change the behaviour of, classes, interfaces, or subpackages that are in any way identified within the Products. Products are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility.

**1.3 Audit, Rights & Records.** The Customer agrees to keep accurate records as to its installation and use of the Products, as authorized under this Agreement, for at least two (2) years after the expiration or termination of this Agreement. UseMango shall be entitled to ask for such details of installation and use of the Products at any time during the period when the Customer is obliged to maintain such records and shall be entitled to check such records for completeness and accuracy, in order to verify that the Products have been properly used by the Customer in accordance with the terms of this Agreement and that the Customer has paid the applicable licence fees and support services fees for the Products. The Customer agrees that it shall promptly pay to UseMango any underpayments revealed by any such audit. Any such audit will be performed at UseMango's expense, provided, however, that the Customer shall promptly reimburse UseMango for the cost of such audit and any applicable fees if any such audit reveals an underpayment by the Customer of more than five percent (5%) of the fees payable by the Customer to UseMango for the period audited.



**1.4 Copyright & Conditions of Use for Products.** Products are licensed to the Customer under the terms of any applicable third-party conditions and/or copyright notices that may, if so utilised by UseMango, be found in licence files, documentation or any other materials accompanying the Products. Copyrights over the Products may also, if so utilised by UseMango, be indicated in copyright notices in the corresponding source files or in other materials accompanying the Products.

**1.5 Disaster Recovery.** If a machine using Products is rendered inoperative in emergency circumstances, then, at no additional fee, any licence rights granted under the terms of this Agreement may be temporarily extended to authorize the Customer to use the Products on a temporary, substitute, or back-up machine of the Customer located at another Customer site or at an authorized third party's site, for purposes of the Customer's emergency or disaster activities, and/or to perform archival or emergency backup, on non-production systems, as long as (i) such use by the Customer is limited to the time period that the Customer is performing such bona-fide disaster recovery activities and/or archival or emergency backup; (ii) the Customer acts in good faith to cease such use of the Product after the Customer has completed such permitted use; and (iii) such use is not for purposes of circumventing the Customer's need to purchase additional licences of Products. Unless otherwise mutually agreed to in writing by the parties, under no circumstances shall the limited time period for such emergency use exceed ninety (90) days.

**2. SUPPORT SERVICES.** During the time that the Customer has paid the applicable annual fees for Support Services for the Products, UseMango will provide the Customer with the support services for the Products. Support services are provided to the Customer solely for the Customer's own use, and the Customer may not use any part of the Products to provide or supply any consulting, support or training services to any third party. Support services in particular, will automatically renew each year unless either party provides written notice to the other party at least sixty (60) days before the end of the then-current subscription term of its intent not to renew.

### **3. LIMITED WARRANTY AND LIMITATION OF LIABILITY.**

**3.1 Products.** UseMango warrants to the Customer only that, for a period of thirty (30) days ("the Warranty Period") following the date the Products are initially licensed by the Customer, those products will substantially conform to the description contained in the applicable documentation. If, during the Warranty Period, the Products do not substantially conform to the description contained in the applicable transaction document or any relevant documentation agreed with UseMango, UseMango shall correct such non-conformities in accordance with the terms and conditions, and Support Services described, in Appendix 1 to this Agreement.

**3.2** The remedies in Section 3.1 are the Customer's sole and exclusive remedies for breach of warranty and UseMango's sole and exclusive liability for breach of warranty. UseMango shall, however, attempt to remedy any non-conformance issue as noted under 3.1, as or where possible via its provision of the Services and its agreed support.

**3.3** The warranties in Sections 3.1 are made to and for the benefit of the Customer only. The warranties will apply only if (i) the licensed software products have been properly installed and used at all times and in accordance with the instructions in any applicable documentation; (ii) no modification, alteration or addition has been made to the licensed software products by persons other than UseMango; and (iii) UseMango receives written notification of the issue or breach, in the case of any warranty issues under Section 3.1, within thirty (30) days following the date the Products were initially licensed by the Customer.

**3.4 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.1 ABOVE, USEMANGO MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SERVICES, SUPPORT SERVICES, DELIVERABLES, WORK PRODUCT, PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT. USEMANGO DOES NOT WARRANT THAT THE SERVICES, SUPPORT SERVICES, DELIVERABLES, WORK PRODUCT, PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR THAT THE PRODUCTS ARE DESIGNED TO MEET THE CUSTOMER'S BUSINESS REQUIREMENTS. USEMANGO HEREBY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, SUPPORT SERVICES, DELIVERABLES, WORK PRODUCT, PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT THAT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

### **3.5 Limitation of Liability.**

**3.5.1** NOTWITHSTANDING ANYTHING TO THE CONTRARY, USEMANGO AND ITS LICENSORS TOTAL AGGREGATE LIABILITY AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY USEMANGO'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY THE CUSTOMER TO USEMANGO

FOR THE SPECIFIC PRODUCTS OR SERVICES (CALCULATED ON AN ANNUAL BASIS, WHERE APPLICABLE), FROM WHICH SUCH A CLAIM ARISES. UNDER NO OTHER CIRCUMSTANCES SHALL USEMANGO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, UNLESS SO RULED BY A COURT OF RELEVANT JURISDICTION, EVEN IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

**3.5.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL USEMANGO OR ITS LICENSORS HAVE ANY LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**3.5.3** The provisions of this Section allocate the risks under this Agreement between the Customer and UseMango. UseMango's fees for the Products and Services account for the allocation of risks and limitation of liability.

#### **4. INDEMNIFICATION.**

##### **4.1 Indemnity by UseMango.**

**4.1.1 Indemnity.** Subject to the remainder of this Section, UseMango shall defend the Customer against any third party claim that the Products infringe any such third party's patent or copyright and indemnify the Customer from the resulting costs and damages awarded against the Customer to the third party making such a claim, by a court of competent jurisdiction or agreed to in settlement; provided that the Customer (i) notifies UseMango promptly in writing of such a Claim, (ii) grants UseMango sole control over the defence and settlement thereof, and (iii) reasonably cooperates in response to a UseMango request for assistance. UseMango will have the exclusive right to defend any such a Claim and make settlements thereof at its own discretion, and the Customer may not settle or compromise such a Claim, except with prior written consent of UseMango.

**4.1.2 Remedies.** Should any part of the Products become, or in UseMango's opinion be likely to become, the subject of such a Claim, UseMango shall, at its option and expense, (a) procure for the Customer the right to make continued use thereof, (b) replace or modify the Products so that the impacts on the Customer (or End-Customer) are avoided or mitigated.

**4.1.3 Exclusions.** UseMango shall have no liability if an alleged infringement is based on (1) combination with non-products, including products not supplied and/or installed by UseMango. For the purposes of this sub-clause, any third party products delivered by UseMango with the Products and unmodified by the Customer shall not be deemed to be non-Products, but shall include for purposes of the foregoing exclusion, (2) use for a purpose or in a manner for which the Products were not designed, (3) use of any older version of the Products when use of a newer UseMango revision would have avoided the infringement, (4) any modification of the Product, or (5) any intellectual property right owned or licensed by the Customer, excluding the Products.

**4.1.4 Limitation.** THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND USEMANGO'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

**5. TERM AND TERMINATION.** Unless otherwise stated in the applicable transaction document or contractual order form, the initial term of this Agreement shall commence on the Effective Date of this Agreement, and shall continue for a period of one (1) year. Thereafter, the term of this Agreement and the term of any Software licences it covers shall automatically renew for additional one (1) year periods unless either party gives written notice to the other of its intention not to renew the Agreement at least thirty (30) days prior to the expiration of the then-current term. The initial term of this Agreement, plus any subsequent renewal term shall be the "Term" of this Agreement. Either party may terminate this Agreement (including all related order forms) upon giving notice in writing to the other party if the other party (i) ceases to do business in the ordinary course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency, which proceeding, if involuntary, is not dismissed within sixty (60) days, or (iv) commits a material breach of this Agreement and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the expiration or termination of this Agreement, (i) all licences granted herein shall terminate, (ii) the Customer (or End-Customer) shall uninstall the Products and relinquish all rights under the related licences, (iii) the Customer shall have no further rights to receive the Services; and/or (iv) Sections 3, 4, 5, and 6 shall survive.

**6. NON-SOLICITATION.** The Customer and the Customer's Affiliates may not hire, or directly or indirectly solicit or employ, any employee or contractor of UseMango who is or was involved in the development, use or provision of the Services or any part of the Products to the Customer, without the prior written consent of UseMango, for a period of: (i) two (2) years after the termination of this Agreement, or (ii) during the time the employee is employed by UseMango and for a period of one (1) year thereafter, whichever is later.

**7. SUPPORT SERVICES.** Support Services shall be supplied by UseMango in accordance with the current UseMango policies and terms and conditions applicable to such Services and shall be available on request. An outline of the present terms and conditions applicable to the provision of UseMango Support Services is contained in Appendix 1 to this Agreement and shall form part of the terms and conditions of this Agreement.

#### **8. MISCELLANEOUS.**

##### **8.1 Assignment.**

UseMango may, upon written notice to the Customer, assign these Terms, inclusive of any Transaction Document or other documents detailing the work to be done thereunder, together with any of its rights or interests thereunder, inclusive of any terms and conditions, and may delegate any of its obligations thereto, to a successor pursuant to a merger, consolidation or sale, or to an entity which acquires all or substantially all UseMango's assets or business. In addition,



UseMango may delegate the performance of certain Services to third parties, provided UseMango (i) obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) and, (ii) controls the delivery of such Services and remains responsible for the delivery of such Services.

In addition to UseMango's rights pursuant to the foregoing, UseMango may, with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) assign its rights and obligations under any Transaction Document entered into under the Terms of this Agreement. These Terms shall then apply in full to any assignee. The Customer may assign its rights and obligations under these Terms and any Transaction Document (i) to any holding company or subsidiary thereof (as such terms are defined in section 1159 of the Companies Act 2006), or (ii) in the event of any sale of its business or similar event. These Terms shall then apply in full to any assignee.

**8.2 Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, or by email properly acknowledged by the personnel of the other Party, or (c) sent by overnight air courier. Where posted, any such notice must be fully prepaid to the appropriate address set forth below. Either party may change its address for notice from any given in any relevant agreement or transaction document by notice to the other party given in accordance with this Section. Notices shall be considered to have been given at the time of actual delivery in person, five (5) business days after deposit in the mail or communicated as set forth above, or two (2) days after delivery to an overnight air courier service. Notices shall be sent as follows:

If to UseMango:  
UseMango Limited  
QEII Conference Centre,  
Broad Sanctuary,  
London,  
SW1P 3EE

Attn: Nalin Parbhu, Managing Director

If to the Customer:

To the address as provided by the Customer in writing in this Agreement or any purchase order or relevant transaction document - for the Attn of the relevant person named by the Customer.

**8.3 No Warranties.** No employee, agent, or representative of UseMango has authority to bind UseMango to any oral representations or warranty concerning the Products. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

**8.4 Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

**8.5 Waiver.**

Neither party's failure to exercise or delay in exercising any of its rights under these Terms will constitute or be deemed a waiver or forfeiture of those rights.

**8.6 Severability.** If any provision in this Agreement (including, without limitation, the prohibition on de-compiling or reverse engineering) is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent possible so as to affect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect.

**8.7 Integration.** This Agreement (including any Appendices) contains the entire agreement of the parties with respect to the subject matter of this Agreement, and the Products in particular, excepting as regards matters or confirmed in any separate transaction document or agreement between the Parties that may form the contractual sale of the Products. It supercedes, and prevails over (in the event of conflict), except as may be elsewhere specified in this Agreement, all previous communications, representations, understandings and agreements, either oral or written, in respect of the Products, including, but not limited to, any terms and conditions printed on UseMango's invoices or on the Customer's purchase orders, unless such terms and conditions are expressly stated and signed for as an amendment to this Agreement and duly signed on behalf of both parties. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Products and Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. Specifically and further, this Agreement will supersede over (i) any conflicting terms in a "click-to-accept" end user licence agreement that may be embedded within the Products, except for terms which are incorporated herein by reference under Section 1.4 herein. Unless the parties expressly state that a term of a purchase order or a transaction document supersedes (or "prevails over") the terms of this Agreement, the terms of this Agreement will prevail and supersede the terms of the purchase order or transaction document, and excepting specifically that any payment terms specified in a purchase order or transaction document shall prevail over any conflicting terms in this Agreement.

**8.8 Government Regulations.** The Customer may not export or re-export the Products except in compliance with the relevant UK regulations pertaining to export or re-export and the related rules and regulations and any similar non-UK government restrictions, if applicable. The licensed software products and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively.

**8.9 Language.** This Agreement is in, and shall be interpreted as being in, the English language only.

**8.10 Independent Contractors.** UseMango is an independent contractor in the performance of these Terms and neither UseMango nor any UseMango personnel are employees or agents of the Customer. Nothing in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.

**8.11 Publicity.** The Customer agrees that UseMango may, with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) reference the Customer and End-Customer as a customer of UseMango, subject to any Customer trademark and logo usage guidelines provided by the Customer. UseMango will work with Customer to ensure any referencing is compliant with legal guidelines as they maybe at the time including sharing reference material with Customer.

**8.12 Confidential Information.** The Receiving Party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except: (a) to exercise its rights and perform its obligations under this Agreement; or (b) in connection with the parties' on-going business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a “need to know” such Confidential Information. The Receiving Party is liable for all acts and omissions of its employees and consultants to the extent that such act or omission would be a breach of this Agreement if done by Receiving Party. The Receiving Party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care. The Receiving Party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the Receiving Party provides prompt written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. The Receiving Party shall protect Confidential Information in the manner provided herein for five (5) years after receipt thereof, unless such obligation ceases earlier pursuant to this Section. Notwithstanding anything to the contrary herein, neither party shall disclose the terms and conditions of this Agreement to any third party, without the prior written consent of the other party. Notwithstanding the foregoing each party may disclose the terms and conditions of this Agreement without the prior written consent of the other party: (a) as required by any court or other governmental body; (b) as otherwise required by law; (c) to legal counsel of the parties; (d) in confidence, to accountants, banks, and financing sources and their advisors; (e) in connection with the enforcement of this Agreement or rights under this Agreement; or (f) in confidence in connection with an actual or proposed merger, acquisition, or similar transaction. Particular terms and conditions may apply to the treatment of confidential information under a separate NDA between the Parties. Where so, the terms in any such NDA shall prevail over this Agreement.

**8.13 Governing Law.** This Agreement will governed by the laws of England and the parties hereby irrevocably consent to the exclusive jurisdiction of the English Court(s).

**8.14 Headings.** The headings in this Agreement are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof.

**8.15 Complete Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, except as agreed in any transaction document or purchase agreement for the Products, which may add or confirm terms but over which this Agreement shall prevail in the event of conflict except as noted specifically in Clauses hereof. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.

By installing the Products and confirming via installation acceptance of the Terms & Conditions for the Products, the Customer agrees that it assents and accepts in full the terms in this licence.

OTHERWISE IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

UseMango Limited.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX 1: SUPPORT SERVICES**

UseMango's Support Services for the Products covers two areas: Upgrades and error correction services including patches.

### **Support Services**

The Customer will designate support personnel who are knowledgeable about the Products to be responsible for reporting errors and receiving and distributing error corrections. UseMango's Support Team representatives will record all error reports and coordinate responses. The Customer may submit error reports electronically. The Customer may also request electronic status reports on reported errors online or via e-mail.

UseMango and the Customer will cooperate in efforts to resolve reported errors. For all reproducible reported errors, UseMango will work to determine the source of the errors and will use commercially reasonable efforts to provide a fix, by-pass or work-around. UseMango may request that the Customer duplicate the error, instruct UseMango how to duplicate the error or provide problem log dumps, diagnostic tests or other investigative support.

The Customer will provide all reasonably requested information to assist in arriving at a problem solution. In cases where UseMango determines in its sole discretion that an error in a standard product has been identified by the Customer, UseMango will attempt to provide a temporary resolution, and where appropriate, provide a permanent fix to the standard Product within a commercially reasonable timeframe.

UseMango may determine based on the information provided by the Customer or through its own investigation that identified errors were caused by non-UseMango hardware, software, customizations, or from unauthorized modifications to Products (a Customer error). In the event of a Customer error, UseMango will either, at its sole discretion, close the ticket without fixing the Customer error or ask the Customer if it would like UseMango to attempt to fix the Customer error. If the Customer and UseMango agree that UseMango will attempt to fix a Customer error (though UseMango is under no obligation to do so), UseMango will bill the Customer for such efforts on a Time and Materials basis, even if UseMango is unable to fix the Customer error.

All error correction services will be provided from UseMango's offices unless UseMango and the Customer mutually agree that UseMango will travel to the Customer location. If UseMango personnel travel to a Customer or Customer location to assist in error correction, UseMango will charge the Customer reasonable travel and living expenses, and, if the error is a Customer error, its normal Time and Materials charges.

UseMango will keep its Products compatible with the versions of third-party software listed in UseMango's then-current product roadmap or as stated in the Transaction Document. UseMango will continue to maintain compatibility with such third-party software upgrades or new Releases to the extent UseMango determines it to be financially and technically expedient to do so.

UseMango will continue to offer error correction services for the Products following the issuance of a superseding Release for up to twelve (12) months; provided however that UseMango may withdraw support for such a product by providing one (1) year prior written notice.

### **Upgrades**

From time to time, UseMango may provide Upgrades for the Products. Upgrades may incorporate third party upgrades as well as accumulated bug fixes. There will be no additional charge for Upgrades provided the Customer is current, without lapse, in its Support Services fees from the date of initial licensing. The Customer will implement provided Upgrades as soon as is reasonably practical.

Upgrades do not include new Products. New Products provide significant new features and functions not available in the current product line, port existing Products to new hardware or software platforms, provide significant new functionality on new hardware or software platforms or are designated by UseMango as having a new Product code.

UseMango may provide the Customer with electronic download access to or physical media containing error corrections and Upgrades, at its sole discretion.

### **Support Prerequisites**

UseMango will have no obligation to provide Support Services if the Customer is not in compliance with the terms of this Agreement. To be eligible for Support Services, the Customer must be current, without lapse, in its Support Services fees from the date of initial licensing, and the hardware and operating system on which the Products are installed must meet UseMango's minimum configuration requirements, which, for a given Minor Release of a Product, will be published in that Product Minor Release's documentation.

If Support Service has lapsed and the Customer wishes to reinstate Support Service on a Product, the charges for Support Services charges that would have applied during the period of Support Service suspension must be paid.

### **Support Service Exclusions**

Unless otherwise agreed to in an applicable Order Form, no Support Services can be provided for (i) the Products that are modified by the Customer personnel or by third parties; (ii) problems caused by accident, neglect, misuse or improper

programming by personnel; (iii) failure or fluctuations in electrical power or hardware equipment; or (iv) failure of the Customer to fulfil its obligations under its written agreements with UseMango.

UseMango will endeavour to provide all reasonable support to the Customer. However, Support Services do not include or cover support that becomes necessary due to:

- A malfunction of equipment or media not supplied or maintained by UseMango;
- Software reconfiguration and any extensions to the Products;
- Project management and training;
- A failure of hardware, equipment or programs not covered by this Agreement;
- Use of software not obtained from UseMango under this Agreement;
- Use in a production environment of any release of the Products not marked as "Generally Available" or suitable;
- Any cause or causes beyond the reasonable control of UseMango (e.g. floods, fires, loss of electricity or other utilities), errors arising from anything other than the Products, such as HP Software, databases, web-servers or hardware;
- The Customer's failure to comply with operating instructions contained in any relevant documentation;
- Any modification, enhancement, extension or customization of the Products made by anyone other than UseMango;
- APIs, interfaces, web services or data formats other than those included with the Products; or
- Any third-party products except to the extent that they are provided by UseMango, and then only in support of the specific interface or functionality that is intended by UseMango.

## APPENDIX 2: GLOSSARY OF TERMS

**"Affiliate"** means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this Agreement, "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

**"Applications"** means the computer software developed and/or supplied as part of the Product(s).

**"Confidential Information"** means information or materials provided by one party ("Disclosing Party") to the other ("Receiving Party") which are identified as being confidential at the time of disclosure. The following information shall be considered Confidential Information whether or not marked or identified as such: information regarding UseMango pricing, product roadmaps and strategic marketing plans. Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the Receiving Party; (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of Confidential Information of the Disclosing Party; or (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party.

**"Connectors"** means any extensions that allow the Products to be integrated with third party software services.

**"Customer"**, which shall mean both the Customer and any End-Customer or user of the Products

**"Documentation"** means any end user manuals or on-line help files regarding the use of the Products that accompany the Products, as revised by UseMango from time to time.

**"Error"** means a failure in the Product to materially conform to the specifications as described in the applicable Documentation.

**"Maintenance Fix"** means a later Minor Release of the Product

**"Order Form" or "SOW"** means the document executed by UseMango and Customer to supply the Products.

**"Products"** means the UseMango Products licensed under this Agreement.

**"Release"** means commercially released code corrections, patches, and minor version releases of the Products

**"Support Services"** means the support services described in Appendix 1.

**"Upgrade"** means a Release, Minor Release, or Maintenance Fix of the Product.

**"User"** means a customer licensed to use the Products but not for allowing further access, sublicensing or distribution to third parties, except as authorized in this Agreement.

## SECTION 3: TERMS AND CONDITIONS THAT APPLY TO SALES OF THIRD-PARTY SOFTWARE BY INFUSE

Sales of third-party Software by Infuse shall be subject to Standard Terms & Conditions as prescribed in Infuse's Terms and Conditions of Trade for such sales as follows:

### TERMS AND CONDITIONS of TRADE

#### SALES OF THIRD-PARTY SOFTWARE BY INFUSE CONSULTING LIMITED

##### 1. INTERPRETATION

In these Conditions:-

"Authorised Representative" means an employee of Infuse who has been authorised by the respective board of Infuse and who is acting expressly in that capacity. A list of Authorised Representatives will be provided on request;

"Infuse" means Infuse Consulting Ltd of 18 Soho Square, London, W1D 3QL (registered in England under number 04384537)

"Infuse Procedures" means the procedures of the relevant Infuse company relating to returns and warranty for the time being in force (details of which are available upon request) and which form part of these terms;

"Conditions" means the standard terms and conditions of sale, licence and supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between You and an Authorised Representative;

"Contract" means the sale and purchase of P&S;

"End User" means any person or body to whom You supply P&S;

"MBP" i.e. manufacturer bid pricing, means special pricing which a manufacturer may offer subject to conditions which it requires are fulfilled by any or all of Infuse You and End User;

"Order Confirmation" means a Written confirmation sent by Infuse to You to confirm acceptance of Your order and may in relation to the provision of Services be a Delivery Schedule or Project Plan;

"P&S" means Product and Services as defined below;

"Product" means the computer equipment or other goods or third party software which Infuse supplies in accordance with these Conditions;

"Services" means the services described in the SoW including without limitation analysis training installation and consultancy which Infuse supplies in accordance with these Conditions;

"SoW" means the Scope of Works which we will prepare before we provide any Services;

"Writing" "Written" includes facsimile or electronic transmission (including e-mail) and comparable means of communication;

"You/Your" means the buyer of P&S.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

##### 2. This section left intentionally blank

##### 3. THE CONTRACT

3.1 Infuse shall sell and You shall purchase P&S in accordance with any order You give which is accepted by Infuse subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (including Your own) even if You have contracted or purported to transact on Your terms.

3.2 No variation to these Conditions shall be binding unless agreed in Writing and signed by an Authorised Representative.

3.3 Save in the case of fraud Infuse shall not be liable for any advice or representation provided to You before a contract is made unless the advice is in Writing and signed by an Authorised Representative.

3.4 Where there is an error in information provided by Infuse we can correct it without any liability on our part and we retain the right to cancel an order in this event.

3.5 The supply of P&S may be subject to external controls e.g. export controls. It is Your responsibility to obtain any necessary consents although Infuse will co-operate in this provided You meet any expense.

3.6 You shall comply and shall make sure that any End User shall comply with the terms of any licensed third party software.

##### 4. ORDERS AND SPECIFICATIONS

4.1 You may place an order by telephone in Writing. An order shall be deemed to be accepted by Infuse on the earlier of Infuse's despatch of an Order Confirmation to You or by Infuse commencing fulfilment of the order. All Written communication is recorded and archived.

4.2 Infuse may change the specification of P&S where there is no material adverse effect on quality or performance or to comply with applicable safety or other statutory requirement.

4.3 You are responsible for ensuring that no infringement of a third party's intellectual property rights will result from Infuse processing P&S in accordance with specifications/instructions given by You.

4.4 All information Infuse provides on Product is based on information from the manufacturer. This is liable to change without notice. Accordingly Product will be supplied with the specifications and information current at the time of supply. Any compliance information is passed on by Infuse from the manufacturer without liability.



## 5. PRICE

5.1 The price of P&S shall be Infuse's quoted price (whether provided orally or in Writing) or is the price specified at the time we accept the order. All prices quoted are valid on the day of publication and are subject to change and availability of P&S unless otherwise specified in Writing.

5.2 Except as otherwise agreed in Writing where Infuse agrees to arrange delivery of the P&S we will charge You for that delivery. Full details are available on request.

5.3 The price is exclusive of any applicable value added tax, which You shall be additionally liable to pay to Infuse.

5.4 Infuse reserves the right to charge a minimum order fee.

## 6. MBP

6.1 In certain circumstances Infuse may apply MBP to Product supplied to You provided that:

6.1.1 You obtain and comply with and ensure that End User obtains and complies with any applicable guidelines of the manufacturer relating to the MBP; and

6.1.2 at the request of either Infuse or the manufacturer You submit and provide and ensure that End User submits and provides documentation in relation to any process carried out for the purpose of verifying that the guidelines have been followed.

6.2 In the event that MBP is not granted or is granted but then revoked as a result of a breach by You or End User of clause 6.1 or otherwise, any MBP applied to the Product by Infuse will cease to apply and:

6.2.1 the full price of the Product will be charged; and

6.2.2 You will reimburse to Infuse (a) the amount of the MBP if the Product has already been paid and (b) any costs imposed on Infuse or incurred by Infuse including, without limitation, costs relating to compliance and verification under clause 6.1.

## 7. TERMS OF PAYMENT

7.1 Subject to any agreement in Writing, Infuse shall be entitled to invoice You (i) for Product on the earlier of delivery or notification to You that Product is available for collection/delivery; (ii) for Services on completion of the SoW and (iii) immediately for any charges under clauses 5.4, 6.2, 7.4, 7.6, 8.7, 8.8, 10.1 or 10.2. Invoices may be delivered to You electronically.

7.2 You shall pay the price of P&S in the currency denoted in the invoice within 7 days of the invoice date (unless a shorter time is agreed in Writing) even if property in P&S has not passed to You. Time for payment shall be of the essence. Receipts for payment will not be given unless requested. Infuse may at any time demand that You make immediate early payment of invoices if we certify that we have reasonable grounds to doubt Your continued creditworthiness.

7.3 Payment will only be effective once Infuse's bank account is irrevocably credited with the amount due.

7.4 If You or any company in Your group (if appropriate) fail to pay on time or breach any other provision of this or any other contract with Infuse or if there is default under Condition 13.2 then You shall be deemed to have repudiated each contract and we shall be entitled to exercise our rights under Conditions 9.4 and/or 13.1 and appropriate any payments made by You against any outstanding invoices as we may think fit (notwithstanding any purported appropriation by You). Statutory interest (and costs incurred in collecting debts) will be charged on overdue invoices as provided by statute under the Late Payment of Commercial Debts (Interest) Act 1998 or subsequent legislation. Such interest shall be charged from the date the invoice was due for payment until payment (both before and after any judgement, unless ordered otherwise). Interest will be compounded on the first day of each calendar month.

7.5 You have no rights to withhold payment by reason of any alleged breach of warranty or other obligation of Infuse. In such circumstances Your sole remedy are the provisions set out in Condition 10. You also have no right to set off payments due.

7.6 Infuse retain the right to charge a fee where payment is tendered by credit card.

## 8. DELIVERY, ACCEPTANCE AND CANCELLATION

8.1 All Product shall be delivered ex works from Infuse's shipping point /distribution centre unless otherwise agreed in Writing or in express or implied agreement the manufacturer of such Product.

8.2 Any dates quoted for delivery are approximate only and Infuse shall not be liable for any delays howsoever caused. Subject to 8.3 and unless agreed otherwise in Writing time for delivery shall not be of the essence. Product may be delivered by Infuse in advance of the quoted delivery date subject to Written confirmation.

8.3 Subject to agreement Product may be delivered in instalments in which case each delivery shall constitute a separate Contract and any rights which You may obtain in respect of one Contract shall not apply to any other Contract.

8.4 Any discrepancy in shipment quantity must be notified in Writing to Infuse within 48 hours of receipt of Product and whenever possible recorded on the proof of delivery paperwork.

8.5 You should refuse to accept damaged Product. Failing this damage must be recorded on the proof of delivery paperwork. Within 48 hours of delivery (or attempted delivery) You must also provide Written notification to us of the damage.

8.6 Acceptance will be deemed to have taken place unless Written notice of rejection is received by Infuse within 3 working days of delivery. You waive any right to revoke acceptance thereafter.

8.7 You may not cancel an order for Product except with the prior Written consent of Infuse and You must indemnify Infuse in relation to all losses resulting from such cancellation. If Infuse agrees to a cancellation we may impose a cancellation fee. Infuse's agreement to a cancellation will not bind us on any future request for cancellation.

8.8 If You cancel an order for Services prior to their commencement Infuse reserves the right to levy a cancellation charge. Where notification is given within the following time periods prior to commencement date as specified in the Order Confirmation the following charges will apply:

8.8.1 100% of price payable where notification within 1 working day;

8.8.2 50% of price payable where notification within 2-5 working days;

8.8.3 25% of price payable where notification within 6-10 working days;

8.8.4 No charge where notification in excess of 10 working days.

#### 9. RISK AND PROPERTY

9.1 Risk shall pass to You at the time Product is delivered by Infuse in accordance with clause 8.1 above. Infuse does not accept any liability for loss or damage caused by a carrier. Once Product is Your responsibility You must keep it fully insured until You own it. You shall on demand produce evidence of this insurance to Infuse. Until the full price for Product has been paid You shall hold the policy and proceeds of insurance to the extent of the unpaid price on trust for us.

9.2 The ownership of Product shall not pass to You until we have received in cash or in cleared funds payment in full for the Product or any other products sold or agreed to be sold to You under this or any other Contract (or any group company of which You are part). You have no right to pledge, charge, encumber or otherwise dispose of Product or any interest therein or purport to do so until You own it.

9.3 Until such time as You own Product You shall hold it on behalf of Infuse and shall retain possession of it in good order and condition properly stored and protected and identified as Infuse's property and shall (in the absence of proof to the contrary) be deemed to deal with it and other like product supplied by Infuse on a 'first in first out basis'.

9.4 If there is an event of default under Condition 13.1 then we may Write to You revoking our consent for You to retain possession of, and any express or implied authority to sell use or consume any Product which You do not own. We can require You to deliver Product up to us (and You shall forthwith do so) failing which we may repossess and in order to do so may enter Your premises or that of any third party where Product is or is thought to be without liability for any resulting damage and against the consequences of which You shall indemnify Infuse and we may re-sell Product.

9.5 No title shall pass in any third party software supplied to You.

#### 10. RETURNS AND RECTIFICATION

10.1 Return of Product by You must be in compliance with Infuse Procedures and if You fail to comply Infuse reserves the right to levy an administration charge (equal to 10% of the Product price subject to a minimum of £20). Failure to comply with the Infuse Procedures may also invalidate any warranty and in certain cases may result in Product being destroyed for which You will still be liable to pay. A restocking fee may also be applied.

10.2 No returns will be accepted without a Return Materials Authorisation ('RMA') number which may be issued by Infuse at its sole discretion. Returns must be in original manufacturer's shipping cartons complete with all packing materials. All Product for return shall be returned freight prepaid by You in the manner specified in the RMA. You must tell us in Writing what You wish us to do with any ineligible returns within seven days of notification of ineligibility. Otherwise we reserve the right to dispose of the Product and charge You for any costs incurred. We do not accept any responsibility for ineligible returns.

#### 11. WARRANTIES AND LIABILITY

11.1 In the case of defective Product, Infuse shall pass on to You the benefit of any warranty supplied to us by the manufacturer so far as we are able to and provided that You comply with Condition 10. Further Infuse warrants that any Services provided to You (or to an End User at Your direction) will be provided using reasonable skill and care and as far as possible in accordance with any related SoW. The above warranty excludes all other warranties and/or representations relating to the P&S.

11.2 Infuse shall be under no liability (a) in respect of any defect in any P&S supplied arising from any drawing design End User requirement or specification supplied by You or End User (b) for any loss of damage to or disclosure of data either contained in Product returned to Infuse or arising from the supply of Services by Infuse (and it is Your responsibility to take all adequate back-up and confidentiality precautions) (c) in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions or failure to follow instructions given by us or the manufacturer or (d) if the total price for Product has not been paid by the due date for payment.

11.3 Where Infuse is providing P&S to You or an End User You are solely responsible for determining Your or the End User's requirements and for ensuring that P&S is satisfactory for the purpose for which it is required and has overall sufficient functionality and compatibility. Where You fail to do this any assessment made by Infuse shall be accepted as binding between You and Infuse.

11.4 You shall ensure that (a) warranty claims are validly made (b) no Product returned to Infuse contains any viruses or defects (c) all warning labels and instructions applicable to Product are not tampered with and/or removed before such Product is sold on or otherwise transferred (d) all serial numbers of Product are recorded and that proper records are kept to enable Product to be traced to any third party and (e) we are allowed reasonable access to such records.

11.5 Save in the case of death or personal injury due to our negligence, the extent of our liability to You for being in breach of contract or tort shall be limited to the amount paid to and retained by us under the Contract and we shall not be liable to You for any indirect consequential or economic loss or damage (whether for loss of profit or otherwise), which arises out of or in connection with the supply of P&S or the use or resale by You of P&S except as expressly provided in these Conditions.

11.6 Without limiting the generality of the foregoing, in submitting each order You shall be deemed to represent and warrant that You are in the business of dealing in, or manufacturing, assembling or configuring computer hardware, software or related products and that You have sufficient expertise and qualifications to form Your own assessment of the qualities and characteristics of P&S (including without limitation their merchantability fitness for required purpose compatibility with other products compliance with standards and networkability, as appropriate).

11.7 Infuse is entitled to treat as conclusive any representation from a person who is or appears to be Your employee representative or agent and in Infuse's reasonable opinion has the requisite authority. This includes but is not limited to the placing of orders using OTS.

11.8 Where any loss is sustained to the property of Infuse or its employees subcontractors or agents while on Your or the End User's premises through the negligence or default of You or the End User then You will be wholly liable for any loss incurred.

## 12. INDEMNITY

If You breach any of these conditions and this causes Infuse any loss or damage then You shall fully indemnify Infuse against the same. It is agreed that such breaches shall include those of clauses 2, 3.6, 4.3, 6, 10, 11.4 and 14.

## 13. EVENTS OF DEFAULT

13.1 If an event of default occurs Infuse can without prejudice to any other right or remedy available to it send notice to You in Writing to (a) terminate or cancel the Contract and to cancel the licence to use any third party software (b) suspend any further deliveries or provision of P&S (c) suspend any warranty or other support for any P&S we have supplied (d) demand that any sums owed by You are immediately due and payable (e) set off any amounts on any account whatsoever and (f) exercise our rights under Condition 9.4.

13.2 An event of default will take place if (a) You make any voluntary arrangements with Your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company or partnership) go into any form of liquidation, winding up, dissolution or insolvency procedure (otherwise than for the purposes of amalgamation or reconstruction) or anything analogous to the foregoing occurs in relation to You in any jurisdiction (b) someone takes control of all or part of Your assets (c) You cease or threaten to cease to carry on business (d) Infuse reasonably apprehends that any of the events mentioned above is about to occur and notifies You accordingly or (e) Infuse becomes entitled to exercise any of our rights under Condition 7.4.

## 14. CONFIDENTIAL INFORMATION

14.1 All information which comes to the knowledge of either of us concerning the other's respective operations including but not limited to price specific information supplied by Infuse to You shall be treated as confidential. It must not be disclosed to any third party without the prior consent in Writing of the party to whom the information relates unless the information was (a) known beforehand (b) becomes publicly available through no breach of confidentiality (c) is received in good faith from a third party who has no obligations of confidence in respect of such information or (d) is required to be disclosed by a court of law or similar body.

14.2 Notwithstanding 14.1 we may make such enquiries and obtain references from or provide information about You to any trade supplier credit reference agency financial institution or to our advisers.

## 15. GENERAL

15.1 Any notice required or permitted to be given under these Conditions shall be in Writing addressed to the receiving party at its registered office or principal place of business. Any signature given by way of electronic signature shall be deemed by the receiving party to have been given by the signatory at the time represented and to be binding upon that party.

15.2 Neither of us will be liable to the other for any delay or failure under the contract (apart from Your failure to pay) if the delay or failure was due to force majeure or any cause beyond reasonable control.

15.3 If we waive Your breach of any provision of any Contract that will not be treated as a waiver of any other or subsequent breach of the same or any other provision of that or any other Contract. Infuse's rights under these Conditions are in addition to any other rights which Infuse may have under the general law or otherwise. If 'You' comprises two or more persons, Your obligations are joint and several.

15.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

15.5 None of these terms are enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person/party who is not a party to the Contract.

15.6 These Conditions and all Contracts shall be governed by and construed in accordance with English law SAVE THAT in the case of Product to be delivered by us or You to premises in Scotland these conditions shall be governed by Scottish law.

15.7 Any special terms for P&S to be supplied outside the United Kingdom shall be specified in the Order Confirmation.

#### SECTION 4: STANDARD NDA/NCA FOR INFUSE WITH ITS CUSTOMERS

The terms contained in the standard Infuse non-disclosure ('confidentiality') and non-compete agreements ('the standard NDA and NCA') may be varied on agreement between Infuse and its Customer(s).

However, the standard NDA/NCA adopted by Infuse is as follows:

##### NON-DISCLOSURE ('CONFIDENTIALITY') and NON-COMPETE AGREEMENT

The Parties:

(A) Infuse Consulting Limited ("Infuse") a company incorporated in England under number of 0438453718 and whose registered office is at 18 Soho Square, London, W1D 3QL

(B) XXXXXXXXXXXXXXXX ("Customer") of address xxxxxxxxxxxxxxxxxxxxxxxxxxxxx, being xxx

Date: xxxxxxxxxxxxxx

This Agreement sets out the terms upon which confidential information may be disclosed by either Infuse or Customer to the other of them.

1. For the purpose of this Agreement, "Confidential Information" means any and all information disclosed by either party to the other pursuant to the terms of this Agreement and which relates to the discussions between them, including, but not limited to, data, know-how, formulae, processes, designs, photographs, drawings, specifications, programmes, samples, ideas and any other material bearing or incorporating any information relating to the systems of either party, and any or all information relating to their finances, business or future plans at any time during the existence of this Agreement or any information disclosed about particular clients of either party and their requirements and needs, except for any information which:

(a) is in or comes into the public domain in any way without breach by either party of this Agreement, or

(b) was already in the possession of one party prior to receipt from the other (without having been previously acquired under an obligation of confidence).

2. In consideration of Infuse or Customer disclosing Confidential Information the other of them hereby undertakes:

(a) to keep all papers, software code and documents relating to the Confidential Information to the order of the other and in a safe and secure place at a location belonging to it;

(b) to use all the Confidential Information only for the Permitted Purpose;

(c) not to disclose the existence or nature of, or make copies of, the Confidential Information in whole or in part to any third party other than such senior advisors or members of its staff who may require access to the Confidential Information in order to carry out the services;

(d) not to make any commercial use of the Confidential Information without prior written consent and participation of the other.

3. Infuse and Customer undertake that their respective responsibilities and commitments in this Agreement shall extend in similar form to that described herein to any subsidiaries or associates or companies that they may otherwise control or have interests in and that should they employ any agents or professional advisers or other similar persons that may use materials, intellectual property or documents as described in this Agreement to do work on their behalf they shall procure a NDA from such persons to protect the rights of the other party and shall bear full responsibility for any loss of the other party should they not do so.

4. At the request of either Infuse or Customer the other of them will immediately return all physical materials containing any of the Confidential Information in their power, possession or control and delete all copies from any electronic store, disk or memory.

5. Nothing in this Agreement shall oblige either Infuse or Customer to disclose any particular Confidential Information or enter into any further Agreement with the other of them or continue any further discussions or negotiations relating to the Confidential Information if it decides, in its absolute discretion, that it is not in its commercial interest to do so.

6. Unless otherwise terminated by mutual consent in writing, this Agreement shall continue in force notwithstanding any subsequent termination of discussions or negotiations between the parties relating to the Confidential Information for a period of ten years from the date of this Agreement.

7. This Agreement is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.

8. The construction and performance of this Agreement shall be governed by English Law and the parties submit to the non-exclusive jurisdiction of the English Courts. This Agreement constitutes the entire Agreement between the parties in respect of Confidential Information and supersedes all previous Agreements, understandings and undertakings in respect of the Confidential Information.

#### TRADE RESTRICTION

Both Parties hereby agree that it is necessary for the proper protection of each of them and their goodwill, in consideration of continuing prospective work between them, that they should enter into the following restrictions both during and for a period of 12 months following the ending of this Agreement and any contract work between them (in event of 'ending', howsoever that 'ending' shall arise and, in terms of contract work, whether that work and any Agreement therefor is negotiated directly or through another person, or firm, or company):

1) That they shall not employ or offer to employ or conclude any contract for services with any employee of the other Party or cause or procure or facilitate the making of such an offer by any person, firm, company or body corporate which shall be in competition with the other Party or solicit or entice away any employee to leave their employment with the other Party, which extends to all its own

subsidiaries or affiliates of any firms or companies or body corporates related to them

2) That they and their personnel shall not falsely represent themselves as being connected with or interested in the business of the other Party, excepting as would be reasonable in relation to any work conducted between the Parties

In confirmation of acceptance of the above terms and conditions to form a legally-binding Agreement

Signed:

For and on behalf of Infuse

Date:

Name:

Title:

Signed:

For and on behalf of Customer

Date:

Name:

Title: